

INTRODUCTION

Pursuant to RCW 34.05.328, the Employment Security Department hereby analyzes the costs and benefits of adopting the proposed rules amending WAC 192-07-041, governing availability for work. These rules are being amended to address the Commissioner's precedential decision (*In re McConnell*, Empl. Sec. Comm'r Dec.2d 1005 (2016)) that holds that claimants can still be eligible for unemployment benefits even when they are physically located outside of the United States.

COSTS

The Department anticipates a one-time cost of \$80,000 to implement the amended rule. The costs include Information Technology updates, policy manual updates, and training staff.

Public costs from the proposed rule arise from possible changes to the tax rate assigned to employers. Employer contributions to the Unemployment Insurance Trust Fund (Trust Fund) are based on two factors: Experience Rating and Social Cost. Just as drivers with a history of at-risk behavior pay higher automobile insurance premiums, employers with a history of more benefit claims generally will pay a higher unemployment tax rate. For 2019, employers will pay unemployment taxes on the first \$49,800 of each employee's earnings. The estimated average unemployment rate for 2019 is 1.03%.

EXPERIENCE RATING

An employer's experience rating is based on charged benefits to the individual employer. The experience-based tax is based on the amount of unemployment benefits paid to former employees over the previous four years. The four-year rolling average cushions the effect of one bad year for an employer. There are 40 experience-rate classes, and employers move up and down those classes based on their past experience. New businesses are charged an experience rating associated with their respective industry until the business establishes an individual experience rating, with a federal mandated minimum of 1% for new businesses.

In 2018, there were 123,903 Washington employers in experience-rate classes 1 through 5 with an average Unemployment Insurance (UI) tax rate of 0.34%, or an average of \$169 per employee per year. This accounted for 72% of total employers. There were 6,983 experience-rate class 40 employers, 3.77% of total employers, with an UI tax rate of 5.70%, or an average of \$2,838 per employee per year.

SOCIAL-COST TAX

The social-cost tax is a secondary assessment that is assessed to all Washington employers. For 2019, the social-cost tax is graduated from 0.1% for rate-class 1 to 0.3% for rate-classes 21 through 40. The social-cost tax covers unemployment costs that cannot be recovered from specific businesses. During economic recessions, when benefits paid far exceed taxes collected, the social-cost tax acts as a brake to slow the decline of the Trust Fund so employers are not hit by sharper, more sudden tax increases.

OUT OF COUNTRY CLAIMS COSTS

Due to the complexity of contribution calculations, the Department is unable to forecast the costs to individual businesses. The proposed rule will create additional claims that may be charged to employers, but the number of possible variables for claims precludes the Department from making a reliable forecast. The following analysis is based on central tendencies of UI data from 2018 and out of country claim denials from January 2017 through August 2019.

The following analysis assumes that all previous unemployment claims that were denied because the claimant was out of the country would instead be allowed. In reality, the proposed rule does not state that all persons who file unemployment claims from outside of the country are automatically eligible for unemployment benefits, and it is likely that at least some of the previous claims that were denied before would still be denied under the proposed rule. Therefore, the following analysis presents a “worst-case scenario” and likely overstates the potential economic impacts of the proposed rule.

For the period available, there were 103 claims denied for being out of the country. With the proposed rule, the potential benefits paid during this time period would include an average weekly benefit amount of \$531 over 26 weeks. This average weekly benefit amount represents \$13,806 in additional charged benefits per claim.

When considering the total claims spread across the state-wide employer base, the proposed rule would have a negligible impact on total costs. The charged benefits from the 103 claims would increase each employers’ average charged benefits by \$2.99 per year. An increase of this size is not likely to increase the tax liability for any employer.

When the possible impact is examined for individual businesses, certain employers may be greatly impacted by a single claim while a single claim for certain employers will have no impact. For employers in experience-rate class 40, there would be no additional tax liability. Based on the average taxable wages and benefit charges for all other employers in 2018, all other experience-ratings classes would see a tax liability increase of at least one experience-rate class.

Table 1

Experience Rate Class	Average Yearly Payroll	Average Yearly Charged Benefits	Benefits + Out of Country estimate	Adjusted Experience Rate Class	Adjusted Tax Rate	Adjusted Tax Rate Variance	Increased Tax Liability
Class 5	\$403,385	\$15,041	\$18,493	22	2.95%	+2.32%	\$923.36
Class 10	\$357,432	\$9,287	\$12,738	12	1.45%	+0.3%	\$119.40
Class 20	\$345,815	\$8,141	\$11,593	24	3.25%	+0.6%	\$238.80
Class 30	\$424,363	\$10,798	\$14,250	34	4.75%	+0.6%	\$238.80
Class 35	\$441,095	\$8,918	\$12,370	38	5.3%	+0.04%	\$159.20
Class 40	\$457,275	\$9,043	\$12,495	40	5.4%	0	0

BENEFITS

Amending rules regarding eligibility for benefits when physically located outside of the United States will provide benefits for certain claimants and expand options for claimants to look for opportunities to return to work in industries with trans-global footprints.

CONCLUSION

Due to the Commissioner’s precedential decision, rulemaking is needed to set clear standards for when claimants are or are not eligible for unemployment benefits while physically located in another country. The rule change supports the Department’s mission to develop the nation’s best and most future ready workforce with opportunities for all by providing additional benefits to claimants while imposing negligible costs across the employer base. Therefore, the Department concludes the probable benefits of the proposed rule are greater than its probable costs.

APPENDIX

ASSUMPTIONS

The estimates included in this analysis are based on the following assumptions:

- Employees earned at least \$49,800 during the base year;
- All benefits are charged to a single employer;
- Claims are paid for a total of 26 weeks;
- Claims with 22 to 26 potential weeks to pay benefits are considered permanently located out of country;
- Claimants with 21 weeks or fewer of potential claims are assumed to have claims denied due to temporary out of country status and are excluded from the estimate;
- Charged benefits are increased by one-fourth of the estimated additional charged benefits to account for the four-year experience rating cycle; and
- Claims meet all other eligibility requirements.

State-wide benefit charge calculation:

$$\frac{(\text{Total Benefit Claims from Jan 2017 – 2019})}{(\text{Average Firms Jan 2017 – Aug 2019})} \div (\text{Number of Months in period}) * 12$$

2018 EXPERIENCE RATE CLASSES

Class	Number of Firms	Class	Number of Firms	Class	Number of Firms	Class	Number of Firms	Class	Number of Firms
1	105225	9	2644	17	1160	25	633	33	697
2	10610	10	2329	18	1037	26	586	34	645
3	6365	11	2119	19	925	27	513	35	560
4	5489	12	1884	20	883	28	498	36	516
5	5092	13	1711	21	839	29	464	37	451
6	4205	14	1530	22	774	30	485	38	462
7	3917	15	1434	23	689	31	415	39	405
8	3361	16	1248	24	586	32	769	40	6451
Total									170,539

2018 TAXABLE WAGES PER EXPERIENCE-RATE CLASS

Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages	Class	Taxable Wages
1	\$7,602,041,582	9	\$2,600,679,707	17	\$572,101,352	25	\$255,176,108	33	\$227,548,773
2	\$5,552,724,934	10	\$1,874,431,673	18	\$517,845,637	26	\$205,343,855	34	\$180,004,674
3	\$6,825,674,397	11	\$1,609,290,249	19	\$364,143,814	27	\$238,795,653	35	\$245,098,410
4	\$6,160,105,998	12	\$1,304,064,095	20	\$446,882,398	28	\$205,885,116	36	\$172,799,596
5	\$6,400,765,493	13	\$1,049,317,440	21	\$396,779,435	29	\$180,496,179	37	\$149,413,802
6	\$4,717,877,850	14	\$863,500,900	22	\$314,183,016	30	\$149,246,852	38	\$128,128,276
7	\$3,424,083,613	15	\$832,704,387	23	\$307,357,505	31	\$153,334,795	39	\$108,340,954
8	\$3,036,800,822	16	\$607,453,399	24	\$314,828,929	32	\$269,243,533	40	\$1,226,987,609
Total									2,438,322,094